

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

|                            |   |                          |
|----------------------------|---|--------------------------|
| United States of America,  | . | Docket #CV-22-709 (MSG)  |
|                            | . |                          |
| Plaintiff,                 | . |                          |
|                            | . | United States Courthouse |
| vs.                        | . | Philadelphia, PA         |
|                            | . | June 2, 2022             |
| Unified Judicial System of | . | 10:00 a.m.               |
| the Commonwealth of        | . |                          |
| Pennsylvania,              | . |                          |
|                            | . |                          |
| Defendant.                 | . |                          |

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TRANSCRIPT OF ORAL ARGUMENT HEARING  
BEFORE THE HONORABLE MITCHELL S. GOLDBERG  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

|                    |   |
|--------------------|---|
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1           THE CLERK: All rise. The United States District  
2 Court for the Eastern District of Pennsylvania is now in  
3 session. The Honorable Mitchell S. Goldberg presiding.

4           THE COURT: Good morning. Good morning. Have a  
5 seat.

6           MS. ST. JOSEPH: Good morning, Your Honor.

7           THE COURT: Good morning. I'll never tire hating to  
8 ask this question. Anyone in the courtroom not fully  
9 vaccinated?

10          UNIDENTIFIED SPEAKER: No, Your Honor.

11          THE COURT: Okay. All right. This is United States  
12 v. United Judicial System of Pennsylvania. Who are the  
13 lawyers for plaintiff?

14          MR. KNIGHT: Your Honor, David Knight for the United  
15 States. I'm joined by Adam Lewis, and we have a paralegal,  
16 Ana Young, as well.

17          THE COURT: Hi. Lewis, Knight, Lewis, Young.  
18 Right? Did I get that right? And for defendant?

19          MS. ST. JOSEPH: Geri St. Joseph for the Unified  
20 Judicial System, along with --

21          THE COURT: St. Joseph?

22          MS. ST. JOSEPH: St. Joseph. Along with my  
23 colleague, Robert Krandel.

24          THE COURT: Spell your last name.

25          MR. KRANDEL: K-R-A-N-D-E-L.

1           THE COURT: Okay. Okay. So just a preliminary  
2 matter. We set up a -- I don't know, three, four years ago,  
3 maybe longer, we concluded that we were being unnecessarily --  
4 and this case doesn't apply to this. So we concluded we were  
5 being unnecessarily inundated with 12(b) motions, and that's a  
6 (indiscern.) this case, right? And this is -- what's the  
7 (indiscern.) number of this case?

8           MR. CRUZ: 22-709.

9           THE COURT: Okay. So this doesn't apply to this  
10 case. But we set up a system whereby before 12(b)s could be  
11 filed by a defendant, they were required to submit a short  
12 letter in laying things out, and then the plaintiff would  
13 respond. And it was really more for cases just by way of  
14 example. Simple example where it's a breach of contract case  
15 and a plaintiff would file a negligence action, which clearly  
16 wasn't allowed. Or a situation where a plaintiff would file a  
17 very lean Iqbal Twombly complaint on, again, I'll use the  
18 example breach of contract, and the defendant would file a  
19 reflexive 12(b) motion that really wasn't going to go anywhere  
20 because the complaint wasn't plausible under Iqbal and  
21 Twombly.

22           And what we did was, so we require a letter to be filed,  
23 and then a response, and we get the lawyers on the phone and  
24 we could say, well, what do you think? We try to work things  
25 out and it's worked. It's really worked. We've reduced the

1 number of opinions we have to write on 12(b) and I think  
2 reduce the amount of time we spend on 12(b), which is really  
3 just an analysis of a complaint, and a pretty low bar.

4 So this case is more legal based. So while you're here,  
5 as I started to get prepared for this, I thought well maybe  
6 that process doesn't really apply to this case. So we're  
7 going to -- you're going to file your -- let me see who's who.  
8 You're going to file -- thank you. You're the state. You're  
9 the Department of Justice.

10 MR. KNIGHT: Yes.

11 THE COURT: You're going to file your 12(b) motion,  
12 and whatever the rules say, you know, the time to respond,  
13 you're going to respond. And, you know, if you need more  
14 time, fine. And is your motion ready or how much time -- do  
15 you want some time to file it?

16 MS. ST. JOSEPH: Your Honor, we're relatively ready  
17 to go.

18 THE COURT: All right. No worries.

19 MS. ST. JOSEPH: We could certainly have it filed by  
20 next week.

21 THE COURT: No worries. So -- how about if I give  
22 you ten days, okay?

23 MS. ST. JOSEPH: Thank you.

24 THE COURT: And whatever the -- you want to give me  
25 -- suggest a time for your response?

1           MR. KNIGHT: Recognizing the rules are 14, if we  
2 could ask for 21 just to --

3           THE COURT: All right.

4           MR. KNIGHT: -- sufficiently respond.

5           THE COURT: And then while we're here, we can use  
6 this time now as an oral argument. Okay? So I have some  
7 questions and then if there's more that you feel that you need  
8 to say that hasn't been addressed through answering my  
9 questions, then I'll give you the chance to do that.

10          So in no particular order, I am asking the Department of  
11 Justice, and it may be laid out in the complaint, how many  
12 counties are you alleging violated the disability  
13 (indiscern.)?

14          MR. KNIGHT: So, Your Honor, in the -- is it okay if  
15 I stay here, or do you want me to approach?

16          THE COURT: You can stay there.

17          MR. KNIGHT: Okay. So in the complaint, as of now,  
18 we have alleged eight specific counties that have violated the  
19 ADA.

20          THE COURT: Okay.

21          MR. KNIGHT: Three --

22          THE COURT: And --

23          MR. KNIGHT: Two counties that are also with  
24 complainants listed, Complainant A, B, and C, but then six  
25 additional counties are listed with specific issues or

1 violations.

2 THE COURT: So can you delineate when you say -- two  
3 with -- you said two with actual complaints?

4 MR. KNIGHT: So in Jefferson County, there are two  
5 named complainants.

6 THE COURT: Right.

7 MR. KNIGHT: Complainant A and Complainant B. In  
8 Northumberland County, there's Complainant C. But those are  
9 just the individuals we named. We're seeking relief for  
10 anyone harmed by the actions across the system. So we have  
11 identified policies in Allegheny, Blair, Butler, Clinton,  
12 Delaware, and York. And we expect through fact discovery to  
13 identify additional victims, individuals who are under court  
14 supervision across the system, and who are in treatment for  
15 their disability who have been denied or limited in their  
16 access to their important physician prescribed medication. So  
17 we expect the relief to be broader.

18 THE COURT: Okay. As to the six, and let's -- try  
19 to keep your answers to -- you know, confined to what's in the  
20 complaint. And you can refer me to paragraphs if you want.  
21 The one thing I didn't get to do is re-review the complaint.  
22 That's a pretty lean complaint. So I'll certainly do that,  
23 you know, before making any ruling. But of the six, are you  
24 alleging that these are policies implemented by the state  
25 courts across the board? In other words, I'll use, you know,

1 in our court, we have a relapse prevention court. So why  
2 don't we use the -- I know in state court, they use the term  
3 drug court. That's (indiscern.). I know that Judge  
4 Strawbridge who presides over our relapse prevention court, he  
5 hates the term drug court. But we use it because it's just  
6 simpler to say.

7 In the -- of the six, were the policies that you alleged  
8 were discriminatory, were they implemented by an individual  
9 judge, or were they implemented by the present judge of the  
10 court, or how were they implemented? And tell me what it says  
11 in your complaint.

12 MR. KNIGHT: Okay. So I mean if I could give an  
13 example at paragraph 54 --

14 THE COURT: Sure.

15 MR. KNIGHT: -- Blair County. Blair County has a  
16 policy court-wide that's in writing that limits the use of  
17 medication only to Vivitrol, which is one of three medications  
18 for opiate use disorder, but it's not appropriate for all  
19 individuals.

20 THE COURT: Who signed that order?

21 MR. KNIGHT: The policies, as we understand them,  
22 are unsigned. They're available on the court's websites.  
23 They're just stated and laid out, but they're not in a signed  
24 order by the judge. Usually, they're in a manual or other  
25 type of document that explains what one should expect when



1 going before that court.

2 THE COURT: And are they -- is the manual for drug  
3 court or is it for any case that's -- where someone is  
4 arrested in that county?

5 MR. KNIGHT: In the case of Blair County, it's for  
6 their treatment courts.

7 THE COURT: For their treatment court?

8 MR. KNIGHT: Correct.

9 THE COURT: And so you're telling me for that county  
10 and the other six, it's just information available on the  
11 website, and so you don't know whether -- like my experience,  
12 and it's been a while since I've practiced in state court.  
13 But my experience is there's one judge who oversees the drug  
14 court. So do you know or have you pled that it was a judicial  
15 decision by the one judge who presides over the drug court, or  
16 was it just an overall policy? Does your complaint delineate  
17 that?

18 MR. KNIGHT: Our complaint for Blair County alleges  
19 that their court prohibits participants in the treatment court  
20 programs from using these medications.

21 THE COURT: So not --

22 MR. KNIGHT: So we haven't state this --

23 THE COURT: -- not a court order.

24 MR. KNIGHT: Correct.

25 THE COURT: A policy.

1 MR. KNIGHT: Correct.

2 THE COURT: Okay. For sake of discussion, if it  
3 were an order by the judge who -- what was the county you  
4 said? Blair?

5 MR. KNIGHT: Blair.

6 THE COURT: The judge who -- what was the county you  
7 said? Blair?

8 MR. KNIGHT: Blair.

9 THE COURT: Just using Blair as an example. It's a  
10 hypothetical. If it turned out that the edict -- what was the  
11 drug you mentioned?

12 MR. KNIGHT: So Vivitrol is allowed --

13 THE COURT: They can only use what?

14 MR. KNIGHT: Vivitrol.

15 THE COURT: Vivitrol. Okay.

16 MR. KNIGHT: But not Methadone or Buprenorphine.

17 THE COURT: If hypothetically --

18 (Court confers with Clerk)

19 THE COURT: If the drug that -- drug -- the judge  
20 that oversaw the drug court issued a judicial order regarding  
21 the only Vivitrol, would you -- would that be problematic for  
22 you under the Genesee case?

23 MR. KNIGHT: No, because -- and how so, Your Honor.

24 So the Genesee case was -- or the Mr. Genesee v.

25 Administrative Office of Pennsylvania Courts was ultimately

1 dismissed by the Third Circuit because the Administrative  
2 office of Pennsylvania Courts does not have a program to serve  
3 as their activity under Title 2 of the ADA that Mr. Genesee  
4 was denied access to.

5 THE COURT: Well, yeah, but it also says, and I'll  
6 read it. Because judicial decision making is not a services,  
7 AOPC provides to either disabled or non-disabled individuals,  
8 Genesee, who's not excluded from the service based on his  
9 disability, and I read that to say -- and tell me if I'm  
10 reading it wrong, if it's judicial decision making, they have  
11 immunity. Do you agree or disagree?

12 MR. KNIGHT: So we disagree. The judicial immunity  
13 would apply to individual judicial decision making in a case,  
14 for example, on the merits. But when there's a court-wide  
15 edict by a judge, such as what happened in Jefferson County  
16 where they banned all medications, that is within the reach of  
17 the ADA and Title 2.

18 THE COURT: So then why -- if you concede that you  
19 can't bring a lawsuit regarding individual judicial decision  
20 making, which I think I heard you say. I'm not trying to box  
21 you in.

22 MR. KNIGHT: Yeah. Yeah.

23 THE COURT: Yeah. Then why are there two individual  
24 -- why did you bring lawsuits on behalf of two individuals?

25 MR. KNIGHT: Why did we?

1           THE COURT: Did you. Why did you? Yes. Weren't  
2 they prevented from taking prescription medications vis a vis  
3 an individual judge's decision?

4           MR. KNIGHT: So in Jefferson County, the two  
5 individuals were denied based on a policy --

6           THE COURT: A policy?

7           MR. KNIGHT: -- implemented by the judge in the form  
8 of an order, but a policy that wasn't applied just to them or  
9 wasn't based on the merits of their case. The judge was all  
10 individuals in this court within 30 days must be off these  
11 medications.

12           THE COURT: What was the reason -- let's go back to  
13 Blair and the -- is it --

14           MR. KNIGHT: Vivitrol.

15           THE COURT: Vivitrol.

16           MR. KNIGHT: Yes.

17           THE COURT: What was the reason, and you're telling  
18 me that you don't know how this came about. It's just a  
19 policy. But do you know why that Blair County has set forth  
20 this edict?

21           MR. KNIGHT: I mean, having worked in this area for  
22 some time, there is a history of prejudice and stigmatized  
23 belief around medication. As you saw from what the judge  
24 ordered in Jefferson County, and we included it in the  
25 complaint, there is this belief that it is trading one drug

1 for another, and that you're not {quote}{unquote} "clean"  
2 unless you're off medication entirely. So it's a, you know,  
3 rejection of the science, which is that an individual can take  
4 these opioid-based treatments --

5 THE COURT: Are you speculating as to that, or do  
6 you know --

7 MR. KNIGHT: Certainly, we -- no, we required --

8 THE COURT: -- that that's the basis --

9 MR. KNIGHT: No, we require fact --

10 THE COURT: -- that the judges in Blair -- let me  
11 get my question out.

12 MR. KNIGHT: Yeah.

13 THE COURT: Do you -- are you saying we think that's  
14 the basis that judges just don't -- in Blair County, that  
15 court just, to use your word, have a prejudice? Or is there  
16 any basis for their decision that you've come across? Which  
17 is it?

18 MR. KNIGHT: Your Honor, it is absolutely  
19 speculation I was entertaining for you. But the point of our  
20 complaint and fact discovery will be to determine the reason  
21 behind that decision, and to bring forward the argument by the  
22 United States that blanket policies blocking disability-based  
23 medication is inappropriate under the ADA.

24 THE COURT: But if it's speculation, you certainly  
25 know that you can't bring a complaint that's deficient and

1 then say let us go forward. We'll find the evidence to backup  
2 what we're saying, right? You agree with that premise, right?

3 MR. KNIGHT: I do agree, sir. Yes.

4 THE COURT: Okay. So how do you know? It could be,  
5 just for sake of, you know, interesting discussion, it could  
6 be that Blair County, to use them as an example said, we don't  
7 want anyone taking any type of opioid prevention addiction  
8 drug because it's got to cultured or something like that.

9 MR. KNIGHT: Sure.

10 THE COURT: It could be that. But it could be that  
11 that county did something else and relied upon extensive  
12 expert advice that maybe you disagree with, but they were  
13 principled in relying on it. So leading to the question of if  
14 you don't know, how does your complaint survive?

15 MR. KNIGHT: So even a principled decision, Your  
16 Honor, is -- does not prevent someone from exposure under  
17 Title 2 of the ADA. So denying access to medication based on  
18 a disability violates the ADA, regardless of the good  
19 intentions of the individual or the entity that is alleged to  
20 have violated the ADA.

21 THE COURT: How's -- I've got to challenge you on  
22 that one because -- not a doctor, not an expert, but we  
23 (indiscern.), our court as an example, and I'll give you two  
24 examples, as a sentencing judge who has to provide  
25 rehabilitation services to persons under my supervised

1 release, I often -- quite often defer to probation. And when  
2 I have someone who has a drug problem, probation has  
3 specialists -- probation officers who are specially trained in  
4 drug addiction, opioid addiction, and also have access to all  
5 kinds of resources.

6 And I can assure you that there are instances where I  
7 defer to them, drug and alcohol treatment at the discretion of  
8 probation, and they determine that opioid addiction medication  
9 is not appropriate. Have I violated the Disabilities Act?  
10 Has probation and our court violated the Disabilities Act?

11 MR. KNIGHT: No. Your Honor, what you've done there  
12 is exactly what the ADA expects, which is an individualized  
13 assessment based on the individual person, their disability,  
14 and the situation. But what the ADA does not allow is a  
15 blanket banning of treatment for individuals with disabilities  
16 across the system with no individualized assessment.

17 THE COURT: Okay. So I'm just repeating back what I  
18 heard you say, which you said very clearly. You're concerned  
19 -- the Department of Justice's concern is the blanket banning  
20 and according to you, it doesn't matter what the reason is if  
21 it's a blanket ban, then it's discriminatory.

22 MR. KNIGHT: Correct.

23 THE COURT: And if your discovery determines that  
24 Blair County, to use them as an example, had a principled  
25 reason for the blanket ban that you disagree with, do you

1 still have a cause of action?

2 MR. KNIGHT: If the principled reason is incorrect  
3 or based on misinformation or wrong science, then we believe  
4 we still have a cause of action.

5 THE COURT: Well, science -- I mean, you know. We  
6 all know, you can get qualified doctors to say it's black and  
7 the other one could say it's white, right?

8 MR. KNIGHT: Sure.

9 THE COURT: So suppose Blair County relied on  
10 persons who were qualified for their blanket ban, that your  
11 experts disagreed with, but you couldn't say, well, these  
12 persons are unqualified under Daubert. So there's a  
13 difference of opinion amongst medical experts.

14 MR. KNIGHT: Sure.

15 THE COURT: Violation of the ADA?

16 MR. KNIGHT: I mean, we would allege it's a  
17 violation of the ADA. And I assume that would need to go to a  
18 fact finder then to determine which expert should have been  
19 trusted or followed.

20 THE COURT: Okay. That makes sense. That's fair.  
21 And you're alleging -- your complaint alleges that all eight  
22 of the counties have a blanket ban?

23 MR. KNIGHT: Have or had in some form or another.  
24 So I don't want to say it's a blanket ban. And often times, a  
25 policy can be in the form of action. So for example, there's



1 no written policy in Northumberland County, but we have  
2 alleged that a policy was applied to Complainant's C, and that  
3 likely was applied to other individuals under court  
4 supervision in Northumberland as well.

5 But we don't have a clear cut, written policy in every  
6 county.

7 THE COURT: Do you have any instances in any of the  
8 eight counties where decisions were made on individual  
9 defendants by individual judges?

10 MR. KNIGHT: Your Honor, I think the closest thing  
11 to that would be Northumberland County in Complainant's C.  
12 But as we alleged, as we learned from the various individuals  
13 involved in Complainant C's treatment, it was understood that  
14 the staff of the treatment court knew that individuals were  
15 not allowed to continue on this medication to graduate. And  
16 so it was the expectation that she would need to get off of  
17 the medication before she could graduate from drug court.

18 THE COURT: Does the Department of Justice concede  
19 if the case goes forward that discovery -- if discovery  
20 determines that the edict against the addiction drugs,  
21 whatever they were, was made on an individual basis to an  
22 individual defendant by an individual judge, do you concede  
23 that's not (indiscern.)?

24 MR. KNIGHT: So I'm going to put it slightly  
25 differently. I still would allege that an edict would violate

1 the ADA, but if an individual in a drug court had showed a  
2 history of diversion of drugs, that individual has no right to  
3 continue on that medication if there's an individual based  
4 reason the judge has told that individual they can no longer  
5 take this treatment because of past bad behavior, other  
6 information that they're bringing into the consideration.

7 THE COURT: Not conceding -- next question -- is  
8 probably not a 12(b) appropriate question, but just curious.

9 MR. KNIGHT: Okay.

10 THE COURT: Have you gone to these eight counties?  
11 Has the Department of Justice gone to these eight counties and  
12 said this is problematic, can you make it more individualized  
13 and not across the board?

14 MR. KNIGHT: So this -- I mean, it's a little bit.  
15 So the letters, which is that -- have we done --

16 THE COURT: A little bit of what? I'm sorry.

17 MR. KNIGHT: It's a little -- to the letters that  
18 the parties filed. The condition precedent before we were  
19 able to file this suit was attempt to reach voluntary  
20 compliance with the Unified Judicial System. We sent a letter  
21 of finding to them, as required by our regulations. We asked  
22 them to come to us and have a discussion about how to resolve  
23 this. The Unified Judicial System in their letter that they  
24 cite did not agree to injunctive relief. And so while they're  
25 open to hearing information from the Department of Justice,

1     they weren't willing to reach the compliance that we needed.  
2     So we have brought suit instead.

3             But we were willing to discuss resolution short of  
4     litigation. We also asked for a tolling agreement to allow us  
5     time to negotiated, and that was denied. So we're here, but  
6     we are totally open to negotiating with --

7             THE COURT: Yeah. I was just curious as to whether  
8     you presented to them what you wanted. And your requested  
9     relief is you want me to order the eight counties to change  
10    their procedures? Or you want me to order the entire  
11    Pennsylvania judiciary to implement something or both?

12            MR. KNIGHT: The second, Your Honor. We believe  
13    it's a unified system and that these eight counties are  
14    exemplar of potentially problematic policies elsewhere. And  
15    we'd like the unified system, which is the appropriate entity,  
16    to do so to direct appropriate policies across the system so  
17    that individuals have access to their treatment.

18            THE COURT: And I assume based on our discussion  
19    that procedure that you want me to order would include clear  
20    language that individual judges can deviate from the policy  
21    based on an individual analysis. Do you agree?

22            MR. KNIGHT: That would be completely fine. Yes.

23            THE COURT: Okay. Okay. All right. Well, we  
24    talked about a lot, so I'll let -- I'm sure you have a lot of  
25    responses. So I'll just let you talk. Go ahead.

1 MS. ST. JOSEPH: Your Honor, so I think the first  
2 thing is just this whole systemic -- you know, the -- it's  
3 eight counties identified in the complaint.

4 THE COURT: How many counties, again --

5 MS. ST. JOSEPH: There are 67 counties in  
6 Pennsylvania, 60 judicial districts. Several of them are  
7 joint counties. They have two counties for one judicial  
8 district. So we've identified -- they've identified eight.  
9 Jefferson County they sent a letter in, and that was it.  
10 Northumberland, they actually -- you know, but when they sent  
11 those letters initially back in 2018 to Jefferson and 2020 to  
12 Northumberland County, the Department of Justice that is, they  
13 sent them to the president judges of those counties. They did  
14 not send them to us, to the Unified Judicial System. The  
15 first --

16 THE COURT: Well, they can correct that.

17 MS. ST. JOSEPH: They --

18 THE COURT: They sent you a letter. It's called a  
19 complaint.

20 MS. ST. JOSEPH: Right. They did. And so there's -  
21 - and then they've -- in the complaint, they allege these  
22 other six counties. It was in their letter of February. They  
23 gave us a letter in February and gave us a week to respond to  
24 it. And when -- we took a little bit longer because, you  
25 know, we needed a little bit more time to respond. We did say

1 we'd be happy to have a conversation. But we weren't going to  
2 enter a consent decree, and we weren't going to enter into a  
3 tolling agreement. But --

4 THE COURT: So you know, I have zero problem with  
5 you doing either. That's your prerogative. You're the lawyer  
6 for the defendant and I mean, I think it's a fascinating case.  
7 If it doesn't settle, that's great with me. I mean, so I'm  
8 not faulting you in any way for not being more amenable to  
9 discussions. No problem. Do what you want. You're the  
10 lawyer.

11 MS. ST. JOSEPH: The -- but our issue here, and it  
12 is something we have discussed many times with counsel for the  
13 Department of Justice, that Pennsylvania, while it is --  
14 constitutionally says it's a unified judicial system, the  
15 individual judicial districts are funded locally by the  
16 individual counties. And the president judges of those  
17 individual judicial districts make decisions with treatment  
18 court -- with their treatment court teams on these issues.

19 These policies are not handed down from the top down.  
20 There's not one policy for every treatment court across  
21 Pennsylvania. And that's the relief they seem to be seeking  
22 here. It's like -- it's a fundamental misunderstanding by the  
23 United States of how Pennsylvania Courts really function. It  
24 really is individual in each judicial district. It's not  
25 broad as they're seeking.

1           THE COURT: Yeah. So like by way of example to make  
2 sure I understand it, I think I have this right. Congress  
3 appropriates in the federal system money for the judiciary and  
4 the Office of Administrative Courts appropriates the money to  
5 the different circuits, and it funnels down to the different  
6 districts. You're saying the state system is different in  
7 that the funding is appropriated from the county in which the  
8 court sits.

9           MS. ST. JOSEPH: Correct. They are --

10          THE COURT: And that makes a difference because  
11 what?

12          MS. ST. JOSEPH: Well, it's not truly centralized  
13 the way other judicial districts -- other states do have.  
14 Like New Jersey, for example, as a truly centralized system  
15 from top down, and they have policies that are statewide.  
16 Pennsylvania is not like that. It's kind of a hybrid, where  
17 it is a system, but that UJS covers not only the courts, it's  
18 all the board, the rules committees, the boards, you know, the  
19 Judicial Conduct Board, the administrative office.

20          THE COURT: So suppose I would find -- suppose I  
21 would say complaint dismissed because the AOPC doesn't fund  
22 the counties that are allegedly engaged in the discriminatory  
23 conduct, okay? Because that seems like that's where you're  
24 going. They're going to say -- I don't want to speak for the  
25 Department of Justice, but they could say fine, let us amend

1 and we're going to sue each individual -- all the eight  
2 individual counties. So then where does that get us?

3 MS. ST. JOSEPH: Then we go into eight different  
4 lawsuits, and we can talk about eight individual policies  
5 within those individual districts. But --

6 THE COURT: Hold that thought for a second. What do  
7 you think about that?

8 MR. KNIGHT: So just looking at the letter they  
9 filed with you and quoting, the UJS leaders have also  
10 implemented extensive measures designed to infuse the  
11 Commonwealth's judicial system with safeguards to the rights  
12 of people with disabilities. So they do concede that they  
13 have the ability to disseminate policies that say do not  
14 violate the ADA.

15 We're asking for those policies to go one step further  
16 and explain that if someone's taking disability based  
17 medication for opioid use disorder, that should be allowed  
18 other -- except for an individualized assessment.

19 THE COURT: But suppose I find that the president  
20 judge of Blair County, because he doesn't get his or her  
21 funding from the defendant in this case doesn't have to  
22 implement what you want me to implement? I mean, then where  
23 are we? Suppose the present judge says thank you for that  
24 guidance, AOPC, but I don't report to you on how I run my  
25 courtrooms. So I'm not doing it. Then what?

1           MR. KNIGHT: And we haven't sued the AOPC. We've  
2 sued the Unified Judicial System, which is a named entity in  
3 the Pennsylvania Constitution and can hold its component  
4 courts accountable. We would be fine, as you suggested, to  
5 amend our --

6           THE COURT: What's the difference between the two  
7 entities? I'm not getting that nuance.

8           MR. KNIGHT: The --

9           THE COURT: The AOPC is the Administrative Office of  
10 Courts, and you sued, I thought, them? No?

11          MR. KNIGHT: Unified Judicial System. A different  
12 named entity in the -- it's the name for the judiciary for  
13 Pennsylvania. It's synonymous with the Commonwealth, except  
14 the Commonwealth is the entire state executive branch. We've  
15 sued the judicial branch.

16          THE COURT: Explain to me why that entity can tell a  
17 president judge how to run their courts.

18          MR. KNIGHT: I believe because the way the  
19 Pennsylvania Constitution is structured, the Unified Judicial  
20 System is led by the Supreme Court of Pennsylvania. So if the  
21 Supreme Court of Pennsylvania would like to direct judges to  
22 not violate the ADA, we would presume that the Supreme Court  
23 had that authority. And that the opposite, if they do violate  
24 the ADA, that the Unified Judicial System could be held to  
25 account for it.



1           In the same way that in Giordano that we mentioned, an  
2           individual who was bringing a former employee of the Superior  
3           Court was terminated and brought as suit based on his  
4           termination against the Unified Judicial System and the  
5           Superior Court, the Unified Judicial System was held to  
6           account at least for the Title 7 claim for the actions of that  
7           one component court.

8           And then separately, the ADA claim went ahead against  
9           just the head of the Unified Judicial System in his individual  
10          -- or in his official capacity for an Eleventh Amendment  
11          immunity work around.

12                 THE COURT: And your position is Janess is it?

13                 MS. ST. JOSEPH: Janess.

14                 MR. KNIGHT: Janess.

15                 MS. ST. JOSEPH: Janess.

16                 THE COURT: Case. Janess. Janess case, the  
17          Department of Justice's position is Janess doesn't apply here  
18          because that involved an individual defendant, and this  
19          involves across the board policy, right?

20                 MR. KNIGHT: Janess doesn't apply because it was  
21          dismissed in that it was a suit against the AOPC, a different  
22          entity. An entity that is a part of the unified system, but  
23          not the entity that did the program service or activity Mr.  
24          Janess was seeking that is individual criminal court  
25          decisions, or the bringing of his trial.

1           THE COURT: Was -- if Janess was brought against the  
2 Unified Judicial System, you think it -- the Third Circuit  
3 should have kept the case going?

4           MR. KNIGHT: Speculating. But I think the case  
5 could have gone forward against the Unified Judicial System.

6           THE COURT: But it involves an individual who was  
7 subject to individual judges' order or inaction. And I  
8 thought your position was in that case, we don't have -- we're  
9 not going to meddle.

10          MR. KNIGHT: I believe in that case, it wasn't the  
11 denial or it wasn't a decision by a judge, it was the failure  
12 of the judicial system to bring the trial that he was  
13 requesting.

14          THE COURT: Right. But the acts -- the omissions  
15 were not omissions by the Unified Judicial System or the AOPC.  
16 They were omissions by judges.

17          MR. KNIGHT: Okay. I'll concede that.

18          THE COURT: Right? Okay.

19          MR. KNIGHT: And --

20          THE COURT: So how's -- so then what's the different  
21 -- suing the different entity have to do --

22          MR. KNIGHT: So the program service or activity that  
23 the Unified Judicial System here provides to probationers is  
24 supervision under probation and drug treatment court programs.  
25 That is a Title 2 program in the way that -- in the Janess

1 case, AOPC could not provide the program that he was seeking,  
2 which was a trial.

3 THE COURT: So back to you. Go ahead.

4 MS. ST. JOSEPH: The program or activity is at the  
5 judicial district level. It is -- the Supreme Court of  
6 Pennsylvania does not supervise probationers. The individual  
7 judges and probation officers in the judicial districts -- out  
8 in the 60 judicial districts are the ones who supervise.  
9 They're the sentencing judges making decisions. Should they  
10 be on probation? Should they be offered a treatment court  
11 program instead of probation?

12 THE COURT: (Indiscern.).

13 MS. ST. JOSEPH: Sorry, Your Honor.

14 THE COURT: That's okay.

15 MS. ST. JOSEPH: So it's down in the judicial  
16 district level. It's not done at -- these decisions, these  
17 policies are not made up here. They're made at the individual  
18 judicial district. And every judicial district has its own  
19 set of policies, procedures, practices, and judges making --

20 THE COURT: Well, how did these come about?

21 MS. ST. JOSEPH: -- decisions.

22 THE COURT: I mean, the Department of Justice is --  
23 what I'm hearing is they're saying we're not really sure how  
24 they came about. We went on their websites and here they are.  
25 Like how did they come about?

1 MS. ST. JOSEPH: The --

2 THE COURT: Was it -- did the PJ decide? Did the  
3 Board of Judges decide? Did the head of the drug court  
4 decide?

5 MS. ST. JOSEPH: It depends on each judicial  
6 district. It's very fact specific to the judicial district.  
7 There's often a treatment court. If it's a treatment court in  
8 particular, it will be, you know, a team of people, including  
9 medical providers, some of whom do not allow or prohibit, as  
10 was the case in Northumberland, do not allow an MAT for OUD in  
11 the county, so the provider that was being used was a problem.

12 It's not just one decision by one person, but it is still  
13 the sentencing court judge who's making, you know, the --  
14 you're going to probation; you're going to drug court. But  
15 it's down at that judicial level. It's not being made more  
16 globally from, you know, a higher position.

17 THE COURT: If you know, in the counties that have  
18 across the board you can't use these drugs policies, can the  
19 sentencing judge override that policy?

20 MS. ST. JOSEPH: Sure.

21 THE COURT: Yes?

22 MS. ST. JOSEPH: Absolutely. And we don't believe  
23 there's any courts that are still prohibiting it. So I know  
24 it says have or has, but our -- we believe discovery will show  
25 that that is not the case anymore.

1 THE COURT: That what's not the case?

2 MS. ST. JOSEPH: That there's no courts prohibiting  
3 MAT currently. That there's no -- and, in fact, they haven't  
4 pled that.

5 THE COURT: The courts prohibiting what?

6 MS. ST. JOSEPH: Prohibiting the medically assisted  
7 treatment, the Suboxone or --

8 THE COURT: I was looking for M --

9 MS. ST. JOSEPH: MAT.

10 THE COURT: MAT. Okay. Have you provided the  
11 Department of Justice the information to substantiate what you  
12 just said?

13 MS. ST. JOSEPH: Yes, Your Honor, we have over the  
14 course of a year we provided them with this information. When  
15 they requested it, we did a survey. We provided them with  
16 information.

17 THE COURT: So they're saying you have policies  
18 eight counties that prohibit in some fashion MATs. You say no  
19 we don't. Here's the proof. You've given it to them, and  
20 they're still proceeding with that -- is that true? Have they?

21 MR. KNIGHT: They have provided what they would  
22 argue is proof. We disagree. But even if it -- we were to  
23 agree.

24 THE COURT: What do you disagree with?

25 MR. KNIGHT: We don't believe that the counties have

1 all stopped the ban. So for example, the president judge from  
2 Blair County at the time of our lawsuit told the press, this  
3 is beyond the pleadings, but that they were looking to revise  
4 their policies. So they had not yet done it. The same thing  
5 that the UJS told us when we asked them a year ago.

6 But voluntary cessation aside, we would like affirmative  
7 policies down from the Unified Judicial System ensuring that  
8 affirmatively, courts are complying with their obligation.  
9 And we think that's allowed. Article 5, Section 10 of the  
10 Pennsylvania Constitution gives the Supreme Court general  
11 supervisory and administrative authority over all the courts  
12 in Pennsylvania. And they had done just that by directing  
13 them to comply with Title 2 generally, just not specifically  
14 in this situation.

15 THE COURT: So if the Department of Justice becomes  
16 satisfied that the eight counties that are a part of the  
17 lawsuit are no longer prohibiting MATs, you're going to press  
18 your cause of relief because you want me to order courts to  
19 comply with the law?

20 MR. KNIGHT: I think we'd like more information  
21 about what that cessation involved. Revoking a policy that  
22 banned something is not the same as replacing it.

23 THE COURT: Well, step back from this for a second.

24 MR. KNIGHT: Yeah.

25 THE COURT: Your -- look, judges, kings, queens,

1 senators, anyone with a -- I shouldn't have put judges and  
2 kings and queens in the same sentence. Anyone with the  
3 authority that judges have have to comply with the ADA, of  
4 course. Everyone has to comply with the ADA, but I don't  
5 know. I'm just thinking out loud at this point, which I  
6 probably shouldn't do. But if you get to the point where  
7 you're satisfied that these eight counties are now compliant,  
8 the query whether you -- we're way beyond the 12(b) argument -  
9 - the query whether you want to insist on having a federal  
10 judge tell every county in the Commonwealth of Pennsylvania  
11 that they must comply with the ADA. That's --

12 MR. KNIGHT: That's fair.

13 THE COURT: That's a decision you guys -- the  
14 Department of Justice will make. It's not my decision. I'm  
15 just thinking out loud. Okay. What other arguments do you  
16 want to tell me about?

17 MS. ST. JOSEPH: I don't believe I have anything  
18 else, other than -- you know, the rest will be covered in our  
19 motion.

20 THE COURT: Okay.

21 MS. ST. JOSEPH: I would note there's, you know, a  
22 statute of limitations argument for the individual  
23 Complainants.

24 THE COURT: Yeah. I saw those. I think we can  
25 cover those (indiscern.). Okay. Okay. Anything else that

1 the Department of Justice wants to say?

2 MR. KNIGHT: No, Your Honor. Thank you for your  
3 time.

4 THE COURT: Okay. Yeah, sure. Thank you. All  
5 right. So we have time table for the submissions and I'll  
6 just -- we'll just go forward. Okay.

7 MS. ST. JOSEPH: Thank you, Your Honor.

8 THE COURT: Let's go off the record.

9 (Court adjourned)

10

11

CERTIFICATION

12 I, Lewis Parham, certify that the foregoing is a correct  
13 transcript from the electronic sound recording of the  
14 proceedings in the above-entitled matter.

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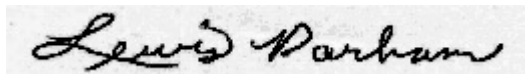
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6/6/22

Signature of Transcriber

Date